

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0078P

Withholding Tax

Calendar Years 1995, 1996, & 1997

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on a withholding tax assessment resulting from a Department audit conducted for the calendar years 1995, 1996, & 1997.

The taxpayer operates a golf course and country club. Income is derived from green fees, golf cart rentals, range fees (driving range), membership fees, party room rentals, and the sale of food & alcoholic beverages at the bar/restaurant operated by the taxpayer. In addition, the taxpayer operates a golf pro shop which sells golf equipment & accessories. The taxpayer files as a Subchapter S Corporation for income tax purposes with four Indiana resident shareholders.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the negligence penalty should be waived as the taxpayer's error was not intentional. The Department points out the taxpayer has a bad payment history.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.